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SUPREME COURT, U.S.

IN THE SUPREME COURT
OF THE UNITED STATES

RYDER TRUCK LINES, INC. :

Petitioner :

VS. : CASE NO. 80-204

HARRIS FARMER :

Respondent :

MOTION TO PROCEED IN FORMA PAUPERIS

Now comes HARRIS FARMER, Respondent in the above styled case, and moves this Court for an order to proceed in forma pauperis and in support thereof shows to the Court the following:

1.

HARRIS FARMER is the Respondent in the above styled Petition for a Writ of Certiorari to the Supreme Court for the State of Georgia.

2.

The Petition challenges a decision by the Georgia Supreme Court in a workmen's compensation case in which Respondent received an award of total disability benefits for an injury arising out of the course of his employment.

3.

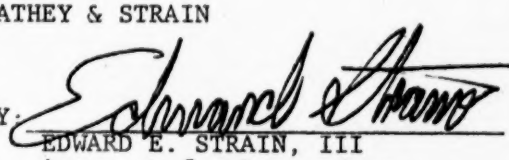
As a result of the injury Respondent was, and is, totally disabled and incapable of gainful employment.

4.

Respondent is unable to pay the costs of printing briefs, or other court costs, or to give security therefor, as evidenced by Respondent's affidavit which is attached hereto.

WHEREFORE, Respondent prays that the Supreme Court of the United States enter an order allowing him to proceed in forma pauperis in the within and foregoing case.

CATHEY & STRAIN

BY: 

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VS.

HARRIS FARMER,

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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Respondent :

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

STATEMENT OF THE CASE

Respondent was totally disabled in a vehicular collision while he was driving a truck hauling regulated commodities for RYDER TRUCK LINES, INC., Petitioner herein. (R. 5, 11-15, 47, 114-116.) Respondent filed a claim against Petitioner for workmen's compensation benefits in Georgia. The only issue in dispute between the parties was whether Respondent was the employee of Petitioner at the time of the injury.

Respondent prevailed in the trial court. The case was then appealed by Petitioner and ultimately resulted in a decision in favor of Respondent by the Georgia Supreme Court. Farmer v. Ryder Truck Lines, Inc., 245 Ga. 734.

The evidence at trial showed that once Respondent began hauling regulated commodities for Petitioner he was controlled by Petitioner as to the manner and means of performing his work. Petitioner told Respondent where to pick up the commodities and where to deliver them. (R. 7, 36, 39, 60-81, 95.) Petitioner instructed Respondent what time to pick up the commodities and what time they had to be delivered at the point of destination. (R. 7, 10, 60-61, 95.) Petitioner performed a safety inspection on the truck Respondent was to

drive. (R. 8, 140-141; Defendant's Exhibit 1) Petitioner required Respondent to follow a specified route while driving the truck on the highways. (R. 8, 37, 83-84, 95.) Petitioner controlled the number of hours driven by Respondent by requiring Respondent to turn in a log book which reflected the number of hours driven by Respondent. (R. 16, 79-80, 85.) Petitioner supplied Respondent with an advance of $150.00 to cover expenses during the trip. (R. 10, 31, 97-98.) Petitioner also signed a trip lease, which was in effect during the duration of the trip on which Respondent was injured, and which stated that the truck Respondent was driving was to be under the direction and control of Petitioner. (R. 71, 140-141.)

No constitutional issues were raised by Petitioner at trial.

REASONS THE WRIT SHOULD BE DENIED

I. PETITIONER HAS WAIVED ITS RIGHT TO ASSERT A VIOLATION OF ITS CONSTITUTIONAL RIGHTS.

Petitioner makes two constitutional arguments to this Court. Petitioner claims first that the decision by the Georgia Supreme Court violates its right to equal protection of the laws under the Fourteenth Amendment. U.S. Const. amend. XIV. Petitioner also claims the decision creates an impermissible burden upon interstate commerce. U.S. Const. art. 1, §8 cl. 3.

Both these arguments are grounded upon the implicit assertion that the two constitutional depravations occurred when the Georgia Supreme Court relied upon I.C.C. regulations and the concomitant trip lease in deciding that Respondent was the employee of Petitioner under Georgia workmen's compensation law. 49 C.F.R. §1057.4(a)(4); Ga. Code Ann. §114-101. Indeed, the only way in which constitutional issues are even arguably involved in this litigation is by injection of the I.C.C. regulations and the trip lease.

However, Petitioner failed to raise either of these constitutional issues at trial. Petitioner was well aware that both the I.C.C. regulations and the trip lease were being used to establish its status as the employer of Respondent, and yet Petitioner remained silent. (R. 81.) Ironically, it was Petitioner which offered into evidence the trip lease now claimed to effect the constitutional depravations. (R. 140-141; Defendant's Exhibit 1.)

In Georgia courts, as well as the federal system, a constitutional challenge must be made at trial or it is waived. City of Atlanta v. Columbia Pictures Co., 218 Ga. 714, 719 (1963); Harrington v. City of Atlanta, 224 Ga. 465 (1968). Because Petitioner failed to properly present its alleged constitutional error at trial, these arguments are waived and should not be heard by this Court.

II. THE RECORD CONTAINS NO EVIDENCE SHOWING A BURDEN ON INTERSTATE COMMERCE.

Petitioner argues that the decision by the Georgia Supreme Court creates a constitutionally impermissible burden on interstate commerce. U.S. Const. art. 1, §8, cl. 3. In support of this argument Petitioner cites the cases of Bibb v. Navaho Freight Lines, 359 U.S. 520, 526, and Raymond Motor Transportation, Inc. v. Rice, 434 U.S. 429, 445.

In both these cases evidence was presented by the aggrieved parties which showed factual support for the assertion that a burden was placed upon interstate commerce by state regulations. In this case the record is devoid of any evidence tending to show a burden on interstate commerce. Petitioner made no showing whatever that holding it an employer under Georgia workmen's compensation law would effect interstate commerce.

In this regard it should be noted that Petitioner's brief is replete with factual statements and assertions which

are not in the record. For example, Petitioner states that Ryder Truck Lines alone enters into approximately 4,295 trip leases per month. This fact is not in the record. Petitioner states that workmen's compensation coverage is a costly burden on the regulated carrier. This fact is not in the record. Petitioner states that the number of one way trip leases between regulated carriers and private carriers is huge. This fact is not in the record. Petitioner states that the cost of providing temporary coverage may well outweigh the benefits regulated carriers derive from one way trip leases. There is no evidence in the record as to the cost of providing temporary coverage.

This Court should not consider Petitioner's argument that a burden has been placed upon interstate commerce when this issue was neither asserted in the trial court nor supported by a proper evidentiary showing in the record.

III. THE DECISION BY THE GEORGIA SUPREME COURT IS BASED UPON STATE LAW AND DOES NOT PRESENT A FEDERAL QUESTION.

Petitioner claims the decision by the Georgia Supreme Court decides a federal question because that Court holds Petitioner is a statutory employer under I.C.C. regulations. 49 C.F.R. §1057.4(a)(4); See, U.S. Sup. Ct. Rule 19, 28 U.S.C.A. According to Petitioner the Georgia Supreme Court has dispensed with the prior common law method of determining the employer-employee relationship and has made Respondent an employee solely by virtue of I.C.C. regulations.

A careful reading of the Georgia Supreme Court's decision shows this argument has no merit. The Georgia Supreme Court based its decision upon what is, and what always has been, the test in the State of Georgia for determining the employer-employee relationship. That test is whether the

employer has the right to control the time, manner, and method of performing the work. Ga. Code Ann. §114-101; 105-501; 105-502(5) and annotations thereunder; e.g. Barbaree v. Shelby Mutual Insurance Co., 105 Ga. App. 186, 188.

The Georgia Supreme Court applied that well-established test in this case. The Court held that because of the terms of the trip lease Petitioner signed, the right to control was present under state law. To be sure, evidence of control came about as a result of federal regulation: The I.C.C. regulations required the carrier to enter into the trip lease. 49 C.F.R. §1037.4. Nevertheless, the test applied by the Georgia Supreme Court was one of state law. The Court did not decide a federal question of substance. U.S. Sup. Ct. Rule 19, 28 U.S.C.A.

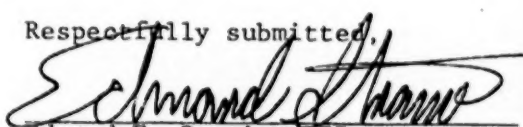
IV. EVEN IF PETITIONER HAD NOT WAIVED ITS CONSTITUTIONAL CHALLENGE THERE IS NO DENIAL OF EQUAL PROTECTION.

In its decision the Georgia Supreme Court holds that under the facts of this case Petitioner exercised such control over Respondent that Respondent became Petitioner's employee for the purpose of Georgia workmen's compensation law. Contrary to the Petitioner's argument, there was no denial of equal protection by this holding. The Georgia court did not rule Petitioner an employer merely because of its status as a regulated carrier. Petitioner became an employer because of the right to control it enjoyed over Respondent. In this respect Petitioner was treated equally with all other employers, whether regulated carriers or not, which exercise the requisite degree of control under Georgia Law.

CONCLUSION

For all the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, EDWARD E. STRAIN, III, a member of the bar of the Supreme Court of the United States and counsel for the Respondent, HARRIS FARMER, hereby certify that I have served three copies of the foregoing Brief of Respondent in Opposition to the Petition for a Writ of Certiorari to the Supreme Court of the State of Georgia, by depositing same in the United States Mail, first class postage prepaid, to:

Mr. George L. Pope, Jr.
Swift, Currie, McGhee & Hiers
771 Spring Street, N.W.
Atlanta, Georgia 30379

This 28th day of August, 1980.

Edward E. Strain

EDWARD E. STRAIN, III
Attorney for Respondent

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